

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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num, and all other such deputy probation officers shall receive \$1,200.00 per annum, and all stenographers who have served for more than two years shall receive twelve hundred dollars (\$1,200.00) per annum, and

all other stenographers shall receive one thousand dollars (\$1,000.00) per annum, and all clerks shall receive \$900.00 per annum. ('23, c. 289, §12; '27, c. 420, §3; Laws 1929, c. 380, Apr. 20, 1931, c. 257.)

Part V. Construction of Statutes and Express Repeals

CHAPTER 107

Statutes

CONSTRUCTION

10928. When to take effect.

Act takes effect the beginning of the day following its approval. Op. Atty. Gen., Apr. 9, 1929.
Laws 1933, c. 251, approved on April 15, became operative on April 16. Op. Atty. Gen., June 24, 1933.

10929. Revision to operate as repeal, when.

Section 1538-1 does not repeal or modify the provisions of the charter of the City of St. Paul providing for condemnation of land for street and highway purposes. 177M146, 225NW86.

10930. Effect of repeal.

Sheriff agreeing to pay detective \$25 for each conviction for violation of liquor laws could pay such amount in pending cases for convictions occurring after effective date of Laws 1933, c. 130. Op. Atty. Gen., Apr. 28, 1933.

10932. Rules of construction.

Prima facie effect of similar South Dakota law construed. Berlin v. K., 183M278, 236NW307. See Dun. Dig. 8821, 8937a(99), 8956.

As between a statutory provision with special and limited application, and another, general in scope, special controls general within former's limited field. Rosenquist v. O., 187M375, 245NW621. See Dun. Dig. 8970.

Ambiguity will be resolved in favor of state. State v. Walsh, 247NW523. See Dun. Dig. 8990.

Literal meaning of statute is not always conclusive, and there must be resort to construction when words, otherwise plain, result in ambiguity when applied to their subject-matter. State v. Walsh, 247NW523. See Dun. Dig. 8938.

1. Judicial duty and policy.

A court will pass upon the constitutionality of a law only when necessary. 181M427, 232NW737. See Dun. Dig. 8930a.

Court must consider act valid until satisfied to contrary beyond a reasonable doubt. Sweet v. R., 250NW46. See Dun. Dig. 8931.

2. Who may question validity.

A litigant may be heard to question the constitutionality of a statute only when it is about to be applied to his disadvantage. 181M427, 232NW737. See Dun. Dig. 8935(79).

Public officials who have no personal pecuniary interest in the matter involved will not be permitted to raise the question of the constitutionality of a statute to avoid the performance of a ministerial duty which it clearly imposes upon them. 181M427, 232NW737. See Dun. Dig. 8935(78).

10933. Particular words and phrases.

* * * * *

6.

Act to establish October 12th as Columbus Day. Laws 1931, c. 175, ante, §2883-2.

Act to establish October 9 as Leif Erikson Day. Laws 1931, c. 120, ante, §2883-1.

14. Published and posted notices.—Unless otherwise specially provided, the words "Published notice," when used in reference to the giving of notice in any proceeding or the serving of any summons, order or process in judicial proceedings, shall mean the publication in full of the notice or other paper referred to, in the regular issues of a qualified newspaper, once in each week, and at uniform intervals, for the number of weeks specified. Provided, however, that when one of the regular publication days for such notice, summons, order or process shall fall upon Thanksgiving Day or upon any legal holiday then and in that case it shall be a compliance with the law to have said notice, summons, order or process published either the day before or the day after Thanksgiving Day or such legal holiday. And a "qualified newspaper" shall be one published in the county wherein the action or proceeding is pending or in which the thing to which such notice relates is to occur or be

done, and conforming to the requirements of §10935; or, if there be none in such county, then in an adjoining county. The term "posted notice," when similarly used, shall mean the posting, at the beginning of the prescribed period of notice, of a copy of the notice or document referred to, in a manner likely to attract attention, in each of three of the most public places in the town, city, district or county to which the subject matter of the notice relates, or in which the thing of which notice is given is to occur or be performed; provided, however, that in any town in which there is located within its geographical limits a city or village, one or more such notices may be posted in such city or village. (As amended Apr. 16, 1931, c. 181, §1.)

* * * * *

(2).

The word "town" contained in par. 2 of this section is not broad enough to authorize the treasurer of a village to take steps relative to depositaries of village funds as provided for in Laws 1931, c. 216, secs. 1 to 4. Op. Atty. Gen., Jan. 24, 1933.

(6).

Farmers' Implement Co. v. Sandberg, 132Minn389, 157NW642, holding that the service of summons on a legal holiday confers no jurisdiction on the court, followed. Chapman v. F., 184M318, 238NW637. See Dun. Dig. 4191(32).

State legislature may legally transact business on Good Friday only if it brings itself within the exception of this section. Op. Atty. Gen., Apr. 12, 1933.

Legislature may legally transact business on Good Friday only in cases of necessity. Op. Atty. Gen., Apr. 12, 1933.

Depositors' meeting should not be called on Good Friday. Id.

Proceedings to vacate highway had upon Nov. 11, were valid. Op. Atty. Gen., May 3, 1933.

(14).

Under section 31 of the Brainerd City Charter, requiring clerk to advertise in official newspaper of the city for one week for sealed proposals, one publication of the notice in the newspaper at least one week prior to the opening of the bids is sufficient. Op. Atty. Gen., June 24, 1931.

Under a statute providing that "two weeks' published notice" shall be given that bids will be received and opened, bids could be opened one week from the date of the last publication, excluding the date of publication, and including the date of opening the bid. Op. Atty. Gen., June 30, 1931.

(17).

180M241, 230NW572.

(19).

The word "year" in §3259, forbidding more than twelve boxing exhibitions during any one year, means calendar year commencing January 1st. Op. Atty. Gen., Feb. 8, 1932.

(21).

179M349, 229NW312.

In computing the three-day period in which a bill is to be returned by the Governor in order to effect a veto thereof under Const., Art. 4, §11, Sunday, but not a holiday, is to be excluded. 172M162, 215NW200.

Liability of the bank stockholder making a transfer on November 23rd, 1925, continued to and included November 23rd, 1926. Bank of Dassel v. M., 183M127, 235NW914. See Dun. Dig. 803(11).

A cause of action alleging items of deposit received in an insolvent bank, the last one on March 7, 1924, is not barred as to such last item on March 7, 1930. The first day is excluded and the last included in the computation of time. Olesen v. R., 184M624, 238NW12. See Dun. Dig. 9625(98).

Where twentieth day after suit is commenced falls on Sunday or legal holiday, demand for change of venue under §9215 may be made on following Monday. State v. Mills, 187M287, 245NW431. See Dun. Dig. 9625, 10123.

First day was excluded and last day included in determining time of cancellation of workman's compensation insurance policy. Olson v. M., 247NW8. See Dun. Dig. 9625.

Publication of summons, order or process is not illegal because first publication falls on a holiday. Op. Atty. Gen., Mar. 14, 1929.

House of Representatives could not legally adjourn in the afternoon of Feb. 11, 1931, until the forenoon of Feb. 16, 1931, without the consent of the Senate, it being immaterial that February 12th is holiday. Op. Atty. Gen., Feb. 10, 1931.

In computing the five day period between the making of application for marriage license and the issuance of the license, the day on which the application is made is to be excluded and the day the license is issued is to be included. Op. Atty. Gen., Apr. 29, 1931.

Fractions of days may not be considered in determining five days after which a marriage license may be issued. Op. Atty. Gen., May 9, 1931.

General rule prescribed by this subdivision does not apply to §§386 and 387, relating to registration of voters. Op. Atty. Gen., Feb. 23, 1933.

(22). The word "towns" in Soldier's Preference Act includes villages. 173M485, 217NW681.

The word "village" in the proviso in Laws 1929, c. 179, does not include a "town." Op. Atty. Gen., June 6, 1929.

10934-2. Certain publications validated.—All newspaper publications of notices, required by law to be published in legal newspapers, which have been published between dates of June 27, 1927 and June 27, 1928 in a daily newspaper which conforms in all respects to the statute defining legal newspapers with the exception that the newspaper had not been published for the requisite length of time, and where said daily newspaper attempted to purchase a weekly newspaper and combine and continue the existing legal weekly paper with the daily newspaper but in fact failed to do so because of a failure to adopt certain characteristics of the existing legal newspaper, are hereby legalized and declared to be valid and sufficient for all purposes. (Act Mar. 11, 1929, c. 72, §1.)

10934-3. The provisions of this act shall not affect any action or proceeding now pending in any courts in this state. (Act Mar. 11, 1929, c. 72, §2.)

10934-4. Certain newspapers qualified and publications validated.—Any daily newspaper which was issued only five days each week during the weeks ending December 31, 1932, and January 7, 1933, respectively, and which was not issued on December 26, 1932, or January 2, 1933, shall be qualified as a medium of official and legal publications under the laws of this State, notwithstanding any failure to issue the same at least six days during each of said weeks, or failure to issue the same on December 26, 1932, or January 2, 1933, provided such daily newspaper be otherwise qualified as a medium of official and legal publications under Section 10935 Mason's Minnesota Statutes for 1927; and any official and/or legal publication or publications published in any such newspaper on or after December 26, 1932, and prior to the passage of this Act are hereby legalized and validated and given the same legal force and effect as if published in a daily newspaper, issued daily at least six days during each of said weeks. (Act Jan. 10, 1933, c. 2.)

10934-5. Certain newspapers legalized.—No newspaper in this state, which conforms in all respects to the statutes defining a legal newspaper, except that it was not heretofore published for one week at some time since it became a legal newspaper, shall be deprived of its standing as such legal newspaper by reason of such omission; but such newspaper shall be deemed to be a legal newspaper notwithstanding such omission of its publication for one week. (Act Jan. 11, 1933, c. 4.)

10935. Qualifications of legal newspaper.—A newspaper in order to be qualified as a medium of official and legal publications, shall: (1) Be printed in the English language from its known office of publication within the city, village or town from which it purports to be issued, and in column and sheet form equivalent in space to at least four pages, with five columns to the page, each sixteen inches long.

(2) It shall be issued at least once each week, and if a daily at least six days of each week, from a known office established in such place for publication and

equipped with skilled workmen and the necessary material for preparing and printing the same; except in any week in which a legal holiday or Thanksgiving day is included, not more than five issues of a daily paper shall be necessary, provided that part of the press work shall be done in its known office of publication, except in cities of the first class when the press work may be done anywhere in the state; and provided that when any newspaper is issued from an office located within a city of the fourth class, and is printed in an adjoining city of the first class, its said office need not be equipped with skilled workmen and the necessary material for preparing and printing the same.

(3) In its makeup twenty-five per cent of its news columns must be devoted to local news of interest to the community which it purports to serve. It may also contain general news, comment and miscellany, and must not wholly duplicate any other publication, and be not entirely made up of patents, plate matter and advertisements.

(4) Be circulated in and near its place of publication to the extent of at least two hundred and forty copies regularly delivered to paying subscribers and have entry as second class matter in its local post-office. Any person interested in the legality of any publication may request of the county auditor of the county in which such publication is made proof of the legal standing of the newspaper in which such publication is contained. The county auditor shall then demand of the publisher of such newspaper as a public record proof of these qualifications, together with a list of the two hundred forty paying subscribers. Failure of such publisher to comply with this demand within ten days after receipt of such request shall then forfeit the legal standing of such newspaper.

All the foregoing conditions shall have existed for at least one year last past, provided, however, that any newspaper which shall have been a duly, qualified medium of legal publication for at least one year immediately preceding the passage of this act as amended, and which shall at any time prior to the time this act shall take effect conform to the requirements herein provided for, shall not affect the qualification or validity of such newspaper as a medium of official and legal publication, and such newspaper shall be deemed to be a legal newspaper, provided that suspension of publication for a period of not more than three months within said year, resulting from the destruction of its office by the elements of unforeseen accident to the equipment thereof shall not affect the qualification of such newspaper after it shall have resumed; nor shall the consolidation of one newspaper with another published in the same county, nor any change in the name or ownership thereof, disqualify it or invalidate any publication continuously made therein before and after the change; Provided further that any newspaper which shall have been published daily or weekly, regularly and without suspension of publication, fifteen years or more immediately prior to the date this act goes into effect, in one city or village, and having a regular office and editorial rooms, shall be deemed to be a legal newspaper, notwithstanding that it is not printed at the place from which it purports to be issued, and notwithstanding that it is not equipped with skilled workmen and the necessary material for preparing and printing the same, or that it is not printed in the English language, providing it shall conform to all the other requirements of said Section 10935, Mason's General Statutes of Minnesota, 1927; Provided further that all legal notices shall be printed in the English language.

Neither the change of the day of publication nor the change of office or place of publication from one place to another within the same county shall deprive it of standing as a legal newspaper, and it shall be deemed to be a legal newspaper notwithstanding such change of the day of publication or change of office and place of publication within the same county.

(R. L. '05, §5515; '07, c. 3; '11, c. 379, §1; G. S. '13, §9413; '21, c. 484, §3; subsec. (1), '23, c. 203; subsec. (2), '27, c. 28, §1; subsec. (2), Apr. 4, 1933, c. 151, §1; Apr. 21, 1933, c. 373.)

The title of Act Apr. 21, 1933, cited, purports to amend only subdivision 4 of this section. The amendment of the other subdivisions of the section is probably unconstitutional. The title of the act reads: "An act amending Mason's Minnesota Statutes of 1927, section 10935, subdivision 4, relating to legal newspaper qualifications."

Sec. 2 of Act Apr. 4, 1933, cited, provides that the act shall take effect from its passage.

St. Paul Legal Ledger giving information affecting credit and other news of official proceedings, held to "contain local and general news, etc." Legal Ledger, Inc., v. H., 176M120, 222NW646.

Newspaper publisher, having no mechanical equipment whatever, but letting it to job shop, does not publish legal newspaper. Op. Atty. Gen., July 21, 1932.

(1).

A legal newspaper need not be of any specified size, but it must be equivalent in space to at least four pages

with five columns to the page, each seventeen and three-fourths inches long. Op. Atty. Gen., Dec. 3, 1931.

10937. Published notice.

Op. Atty. Gen., Mar. 14, 1929; note under §10933.

10950-4. Mason's Minnesota Statutes to be prima facie evidence.—Mason's Minnesota Statutes of 1927 shall be prima facie evidence of the statutes therein contained, in all the courts of this state, without further proof or authentication. (Act Feb. 1, 1929, c. 6.)

10950-5. 1931 supplement to Mason's Statutes to be prima facie evidence of the statutes therein contained.—The 1931 Supplement to Mason's Minnesota Statutes of 1927 shall be prima facie evidence of the statutes therein contained, in all the courts of this state, without further proof of authentication. Act. Apr. 15, 1933, c. 254.)

CHAPTER 108

Express Repeal of Existing Laws

10963. Session Laws of 1876.

Repeal of ch. 28 is modified by the provisions of §7429 herein. Op. Atty. Gen., May 3, 1930.

10970. Session Laws of 1885.

This repealer is modified as to villages organized and operating under the village code of 1885, by §1109 herein. Op. Atty. Gen., Jan. 16, 1930.

10975. Session Laws of 1895.

This repealer is modified as to villages organized and operating under the 1885 village code, by §1109 herein. Op. Atty. Gen., Jan. 16, 1930.

Laws 1895, c. 257, authorizing villages to purchase or rent fire apparatus was not repealed by this section. Op. Atty. Gen., Oct. 6, 1931.

10978. Session Laws of 1901.

This section repeals Law 1901, c. 252. Op. Atty. Gen., Apr. 27, 1933.